Filed 2/6/19 Levine v. Levine CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

LARRY LEVINE, as Trustee, etc. Plaintiff and Appellant, v. LESLIE LEVINE, as Co-Trustee, etc., Defendant and Appellant.	B284749 (Los Angeles County Super. Ct. No. YP011766)

APPEAL from orders of the Superior Court of Los Angeles County, Mary Thornton House (Ret.), Judge. Affirmed.

Sundstedt & Goodman Law Offices, Michal J. Sundstedt, Lani M. Goodman, for Defendant and Appellant.

Lurie, Zepeda, Schmalz, Hogan & Martin, Troy L. Martin, for Plaintiff and Appellant.

Plaintiff and appellant Leslie Levine appeals from a post-judgment order awarding attorney fees to defendant and appellant Larry Levine after the denial of her motion to enforce a settlement and appoint a receiver.[1] On appeal, Leslie contends the probate court abused its discretion by finding Larry was the prevailing party. We find no abuse of discretion.

In his cross-appeal, Larry contends that the probate court abused its discretion by denying his motion for reconsideration of the amount of fees awarded. We find no abuse of discretion as to the probate court's ruling on the motion for reconsideration. We affirm the order awarding attorney fees.

FACTUAL AND PROCEDURAL BACKGROUND

Saul and Bernee Levine had three children: Leslie, Larry, and Laurie Levine. They had two grandchildren, who were Leslie's children. Saul and Bernee had a complex estate plan consisting of the Second Amended Levine Family Trust created March 22, 1991 (the Family Trust), the Saul Levine Irrevocable Trust dated March 22, 1991 (the Saul Trust), and the California partnership LUV 5, Ltd. (LUV) (collectively the Levine estate). They also established the

---

[1] Because more than one participant shares the last name Levine, they will be referred to by their first names for ease of reference.

Laurie Levine Irrevocable Trust dated April 22, 1996 (the Laurie Trust), the Larry B. Levine Irrevocable Trust dated April 22, 1996 (the Larry Trust), and the Leslie B. Levine Irrevocable Trust dated April 22, 1996 (the Leslie Trust). The irrevocable trusts owned limited partnership interests in LUV. LUV made monthly distributions to the irrevocable trusts. Leslie and Larry were co-trustees of the trusts in their names, but Larry was the sole trustee of the Laurie Trust.

Bernee died in 2004. Upon her death, the Family Trust divided into sub-trusts. Saul and Larry were appointed as co-trustees of the Family Trust by amendment on June 22, 2004. If Saul or Larry became unable to serve due to disability or death, Leslie would act as co-trustee. The Levine estate held several income properties managed by Dave Reichelsdorf. Many of the properties were co-owned with third parties. Laurie passed away on April 7, 2011.

In September 2011, Leslie withdrew $137,000 from the Larry Trust. Larry filed a probate petition against Leslie on February 3, 2012, concerning the Larry Trust (LASC No. YP 011766). On February 7, 2012, Leslie filed a probate petition against Saul and Larry regarding the Family Trust (LASC Case No. YP011904). Leslie's petition was found by the court to be related to Larry's petition. On June 13, 2012, Leslie filed a civil action concerning LUV (LASC Case No. YC067272). On June 27, 2012, Leslie filed two probate petitions concerning the Leslie Trust within the case number for Larry's petition. That same day, she filed a probate

petition regarding the Saul Trust (LASC Case No. YP 011939).

On December 17, 2012, the parties entered into a global settlement and mutual release of all four cases, which was approved by the probate court on December 27, 2012. Larry agreed to take the following actions immediately: 1) make increased monthly payments to Leslie from LUV during Saul's lifetime; 2) file an amended inventory in Laurie's estate to remove assets mistakenly listed in the inventory of the estate; 3) distribute gifts of four properties to Leslie and three properties to Larry, with Saul permitted to reside in Larry's properties for as long as he was able; 4) transfer five properties to Larry and Leslie as tenants in common and list them for sale, using the proceeds to equalize the property gifts and holding the remaining funds for Saul's benefit, to be distributed equally to Larry and Leslie upon Saul's death; and 5) file a gift tax return no later than April 15, 2013, and pay gift taxes from the trust estate.

After Saul's death, the following actions would be taken: 1) Leslie would be transferred five parcels of property from the Family Trust, one property from the Saul Trust, and one property from LUV; 2) Larry would be transferred three parcels from the Family Trust, one property from the Saul Trust, and two properties from LUV; 3) the sibling who received properties with the highest aggregate appraised value would be assessed a surcharge to equalize the distribution; and 4) the trustee of the Family Trust would liquidate all remaining assets, from which Leslie or Larry

could designate additional real properties in exchange for a charge against the final distribution, provided there were sufficient assets to pay the estate debts and estate taxes, and the trustee would pay estate debts and taxes, after which any remaining funds would be distributed equally between Larry and Leslie.

The parties agreed on the following provisions as well: 1) Leslie was provided specific items from her mother's personal property; 2) Larry would prepare an inventory of the remaining items of Bernee's personal property and the siblings would meet to divide those items; 3) certain gold and silver coins were stated to exist; 4) Leslie and Saul agreed to resign as co-trustees of the Family Trust, the Larry Trust, the Laurie Trust and the Saul Trust, and as co-general partner of LUV; 5) Larry agreed to resign as co-trustee of the Leslie Trust; 6) Larry would serve as co-trustee of the Family Trust and the Saul Trust, and as co-general partner of LUV, without compensation, while Richard Norene was appointed to act as the other co-trustee, to be paid on an hourly basis; 7) Reichelsdorf would continue to act as property manager for the properties that he was managing for the Levine estate; and 8) beginning on January 1, 2013, the trustee of the Family Trust and general partner of LUV would provide Leslie with certain monthly financial statements.

LUV made regular payments as required under the settlement agreement. Larry distributed assets from the Laurie Trust, and transferred certain properties to Larry

and to Leslie as required under the settlement agreement. Saul died on November 29, 2015.

On January 24, 2016, Larry contacted Norene to discuss administration of the estate. Larry had opened a bank account for the estate and wanted to retain attorney James Diamond to assist with administration, to which Norene agreed. Larry also retained William Glantz to prepare the estate tax return for Saul's estate. Glantz had worked for Saul as a certified public accountant (CPA) for more than 20 years.

On February 4, 2016, Leslie's attorney wrote to Larry to request performance of the remaining terms of the settlement agreement. Specifically, Leslie sought: 1) a current inventory with current appraisals of the value of all property as of November 29, 2015, in the Levine estate and anything outside of the trusts; 2) an accounting and copies of all tax filings and all actions taken by the co-trustees to which Leslie was entitled as a beneficiary of the estate; 3) production of all documents regarding valuation of any property so that distribution of Leslie's share of the property could be equalized; 4) an inventory of Bernee's remaining personal property within ten business days and a list of five days when Larry could meet to divide the property; 5) distribution of Leslie's interest in cash and assets of LUV, as well as transfer of the property from LUV, and dissolution of the partnership; 6) an accounting of all funds distributed to the Saul Trust from Laurie's estate and distribution of Leslie's share; 7) an agreement from Larry to adjust the

valuation of a property that Leslie received during Saul's lifetime; 8) listing for sale of the properties held as tenants in common; 9) transfer of six properties from the trusts to Leslie; and 10) the sale of all other real properties not addressed by the terms of the agreement, and liquidation of all assets, to allow equalization of Leslie's distribution, pay debts and taxes of the estate, and prepare the estate for distribution.

On February 17, 2016, Norene filed a petition for an order to bring the Family Trust and the Saul Trust under court supervision. Norene sought an order for an inventory as of November 29, 2015, to be filed with the court within 120 days, and an accounting. Norene alleged that Larry was cordial, but had systematically separated Norene from his co-trustee duties to avoid the cost of engaging Norene in the process. As a result, Norene could not discharge his duties as co-trustee. Larry and Reichelsdorf managed all of the properties and provided summaries which were inadequate for accounting purposes.

On March 17, 2016, Leslie filed a motion to enforce the settlement agreement and appoint a receiver. Leslie alleged that Larry and/or Norene had failed to perform under the settlement agreement. Specifically, they failed to: 1) act together as co-trustees of the Family Trust and the Saul Trust, and as co-general partners of LUV; 2) provide an inventory of assets of the Levine estate as of December 2012 or as of November 29, 2015, and provide an inventory of Bernee's personal property; 3) provide monthly financial

information for the Levine estate; 4) allow the properties identified in the settlement agreement and owned as tenants in common to be listed for sale; 5) acknowledge the inaccurate appraisal of a property that was distributed to Leslie; 6) distribute Leslie's interest in cash, assets, and a property of LUV; 7) transfer five properties to Leslie that she was to receive after Saul's death from the Family Trust and one property from the Saul Trust; and 8) liquidate all other assets to allow for equalization of Leslie's distribution from the estate, to pay debts and taxes of the estate, and to prepare the estate for distribution of Leslie's full fifty percent interest.

On April 29, 2016, Larry opposed the petition on the grounds that the settlement agreement had not been breached and administration of the trusts was proceeding according to probate custom and practice. In support of the opposition, Larry filed Norene's declaration. Norene stated that he served as co-trustee only, and had never agreed to act as a co-general partner of LUV. Larry also submitted a declaration from attorney Diamond. Diamond declared that the majority of the estate tax exemption had been used on gifts under the settlement agreement and the tax liability for the estate would be substantial. The exact amount of the estate tax could not be determined until all of the properties were appraised, assets evaluated as of the alternative valuation date at the end of May 2016, and the estate tax return prepared and filed. The estate tax return was not due until the end of August. With estates of similar size, it

was the custom and practice in trust administration to refrain from distributing any assets until after the estate tax return was filed and the taxes paid. The trustee did not know the amount of assets to liquidate to pay the estate taxes until the estate tax liability was known. Diamond had begun to compile the information necessary to prepare the estate tax return, including hiring appraisers, who were conducting appraisals. Diamond had also begun preparing inventories of the trust assets to be used in preparing the estate tax return. Diamond, Larry, and Glantz had met on March 22, 2016, to discuss preparation of the estate tax return. They agreed that it would be inappropriate to make any distributions from the trust until after the estate tax return was completed and the estate taxes were paid.

Leslie filed a reply to the opposition on several grounds, including arguing that property appraisals did not take months to obtain, and the partnership could be dissolved prior to filing the estate tax return. She submitted her attorney's declaration that the tax provisions governing the alternate valuation date did not require assets to remain undistributed.

A hearing was held on May 12, 2016. The probate court expressed a tentative ruling to grant the motion to enforce the settlement, based on the animosity between the siblings and Larry's exercise of control contrary to the settlement agreement, but deferred ruling. The court had no faith in Norene's ability to do his job as a fiduciary and noted the settlement agreement had been largely ignored for three

years. Larry's attorney noted that Diamond was hired to administer the estate in January 2016, after consultation with Norene. Appraisers had been hired, completed their inspections, and were issuing reports within a few weeks. Estate tax liability was estimated to be $6 million, but Larry could not determine yet whether there were sufficient liquid assets to cover the taxes. The court ordered Larry to complete appraisals and make reasonable assessments of the estate tax liabilities by July 14, 2016. All information concerning appraisals and tax liabilities must be shared with Leslie. The court stated its expectation that Larry would estimate the date for transfer of all properties and assets due to Leslie under the settlement agreement on July 14, 2016. If the items were not completed expeditiously or there was a hint of further delay, the court would enter judgment and appoint a receiver.

On June 24, 2016, Larry sent appraisals of the properties and an inventory of assets to Leslie. On July 14, 2016, Larry filed a report on the status of administration of the estate. He submitted Glantz's declaration in support of the opposition to the motion to enforce the settlement agreement. Glantz declared that he had advised against distributing any assets of the Family Trust or LUV until the tax liability could be determined. It was not possible to estimate the tax liability until they received appraisals of the numerous properties owned by the Levine estate. Glantz received the appraisals on June 20, 2016. Because the tax return was not yet completed, Glantz's calculations were

preliminary and merely estimates. He estimated that the taxable estate was in excess of $9.7 million. He estimated the taxes would be approximately $3.4 million. The estate tax return was not due until nine months after death, which would be August 29, 2016, in this case.

After receiving the appraisals, Glantz spoke with Larry and his attorney, Norene and his attorney, and Diamond. They decided that they could make a preliminary distribution to Larry and Leslie without placing the trust and its beneficiaries at risk in the event of further tax liability. In determining the amounts of the distributions, they kept a substantial reserve, since the tax liability had not been finally determined. In addition, in Glantz's experience, it was virtually certain that the tax return would be audited for an estate of this size. Glantz advised a preliminary distribution of six properties with an aggregate appraised value of $4,270,00 to Leslie and two properties with an aggregate appraised value of $4,387,000 to Larry. In Glantz's 35-year career as a CPA, it was very unusual to make such a sizable preliminary distribution before estate taxes had been calculated and paid. In fact, assets were almost never distributed before the estate received a closure letter from the Internal Revenue Service (IRS) indicating that no further taxes were due. In addition, it was extremely unusual for such a large distribution to be made from an estate of this complexity and size within eight months of death. An estate of this size generally took

between one and two years to receive a closure letter from the IRS and make distributions.

A hearing was held on July 14, 2016. The minute order reflects that the court's tentative ruling was to grant the motion, order Larry to provide information to Leslie, and order Larry to transfer, sell, and distribute the assets at issue no later than September 15, 2016. The motion was continued to September 15, 2016 for a report on the status of the tax return and compliance with the court's tentative ruling. On September 8, 2016, Leslie's attorney filed supplemental documents in support of appointment of a receiver.

A hearing was held on September 15, 2016, and the matter was continued for further argument. On October 12, 2016, Larry filed a supplemental brief providing the state of the trust administration. He explained that Leslie had received properties with a total value of $4,385,000 within eight months of her father's death, and an additional $1 million shortly after the tax return was filed and taxes paid. The gifts to Larry and Leslie could not be equalized until the trustees received a closure letter from the IRS. Another hearing was held on October 12, 2016. The court took the matter under submission.

On October 26, 2016, the court issued a written order denying the motion without prejudice. The court found the estate tax returns had been completed rapidly for such a large estate and an audit was likely, due to the size of the estate. The court also found distributions had been made to

Leslie, although not as quickly as she would have liked or believed timely. There was an almost complete breakdown in communications between Leslie and Larry, and also between their attorneys. The court found some indication that Larry had not made earnest efforts with respect to some properties, but it appeared to result from the communication failures between the parties. Leslie sought to have Reichelsdorf removed, but Reichelsdorf did not manage any of the properties in which Leslie had an interest. The court stated, "it does appear that compliance with the settlement is sluggish and [there is only compliance] when a court date is pending; however, it is this court's opinion that the tax issues and liabilities have hamstrung Larry Levine's abilities to move forward with certain parts of the settlement agreement."

The court noted that Leslie did not want any trustees removed, and appointment of a receiver was a drastic and expensive remedy. The court added, "It simply cannot be said that Larry Levine's actions, while frustrating to his sister and her counsel, with the issue of the tax liability looming, warrants the appointment of a receiver." The court also noted that granting the motion would be mostly symbolic until the parties resolved their communication issues. The court therefore proposed the appointment of a neutral party to function as a real estate sales coordinator, who would work with Larry and Norene to sell the remaining properties, report to all parties on any actions occurring with the properties, and advise about the

feasibility of offers. The court denied the motion to appoint a receiver and enforce the settlement, without prejudice. The court set a hearing on November 29, 2016, regarding retention of a real estate sales coordinator.

After a hearing on November 29, 2016, the court appointed James Sullivan to act as a special trustee to facilitate the sale of three properties. One of the properties was subject to Los Angeles rent control laws and was occupied by a tenant of more than 20 years, who was older than 62 years.

On December 21, 2016, Larry filed a motion for costs of $2,659.17 and attorney fees of $74,349.17, based on a provision of the settlement agreement that allowed costs and attorney fees to the prevailing party in the event of a dispute arising from the agreement. Larry attached invoices from his attorneys that were heavily redacted. Leslie opposed the motion on the ground that the probate court had substantively ruled in her favor.

A hearing was held on the motion for costs and attorney fees on February 15, 2017. The court took the matter under submission. On April 25, 2017, the probate court issued a thoughtful 10-page order granting the motion for attorney fees in part. The court found Larry was the prevailing party, but reduced the requested attorney fees to $25,112. The court denied costs of $2,659.17, because the motion did not adequately identify whether the costs related to the motion to enforce the settlement or simply to trust administration generally. The court reviewed the motions,

oppositions, declarations, and hearing transcripts before making a prevailing party determination. The court's written order relied on the documents filed in opposition to the motion to enforce the settlement. The court acknowledged the tentative ruling to grant the motion, which was deferred to allow Larry to make a reasonable assessment of the tax liability and provide information to Leslie, and the court's initial inclination to grant at least a portion of the requested relief by converting the settlement agreement into a judgment. The court also acknowledged that James Sullivan was retained to assist with the sale of certain properties, although the court had also noted that appointment of a receiver was a disfavored remedy. Based on the court's holistic review of the proceedings, and focusing on the relief requested and denied, the court found Larry to be the prevailing party. On balance, Leslie's requests had been denied or were moot.

Specifically, conversion of the settlement agreement to a judgment had been denied, and the appointment of a receiver had been denied. The assertion that Larry and Norene failed to jointly manage certain assets was denied, because Norene was not appointed as a co-general partner of LUV. Removal of Reichelsdorf was moot, because he no longer managed properties that Leslie controlled. The settlement agreement did not require any payments from LUV after Saul's death.

The court found Leslie's motion had been premature, and attorney fees were incurred as a result, for which

compensation was required. The probate court found that with hindsight, Larry's arguments had merit. At the first two hearings, Larry explained preparation of the estate tax return for the multi-million dollar estate, consisting primarily of non-liquid real properties that required appraisals, prevented immediate distribution of the estate assets. The settlement agreement permitted the parties to designate additional properties to be retained, which could not be completed without a finalized tax return and calculation of the amount necessary to pay estate taxes. This information was provided by attorney Diamond, who was retained within a reasonable time after Saul's death to work on the issues. Glantz's declaration described the difficulties associated with the estate tax return, the potential for an audit, and his advice to retain all assets until the return was prepared and the tax liability assessed. The tax return was not due until nine months after death, which was August 29, 2016, and extensions for an estate the size of the Levine estate were not uncommon. One or two years for an estate of this size was typical. Leslie had offered no evidence contrary to the declarations of Glantz or Diamond, so the evidence was uncontroverted that the tax return was completed in record time for an estate of this size. No delay could be ascribed to Larry. In addition, Probate Code section 12200 requires a personal representative to petition for final distribution or a status of administration within 18 months if a federal estate tax return is required.

In the court's view, Leslie's argument that nothing was done unless there was an imminent hearing and until the appointment of Sullivan had no impact on the prevailing party determination. The hearings were caused by the motion to enforce the judgment and Leslie's insistence on distribution of the estate, regardless of the impact on estate taxes, the time necessary for appraisals to be completed, and the selection of additional properties by the parties based on the appraisals. The court could not determine whether Larry would have taken action, because of the prematurity of the motion to enforce the settlement agreement. In light of the deadlines established under probate law, speculation was improper.

The court noted that the billing invoices were redacted to avoid waiving attorney-client privilege or revealing tactical decisions. The court found the practice was understandable, permitted, and likely required, but many of remaining line items could not be connected to the motion to enforce or suggested fees related to normal trust administration. The court reduced the amount of attorney fees awarded to $25,112. The request for costs of $2,659.17 was denied, because the motion did not adequately identify whether the costs were related to the motion to enforce the judgment or to trust administration generally.

On May 10, 2017, Larry filed a motion for reconsideration of the order granting attorney fees. Larry waived attorney-client privilege with respect to the billing entries and submitted entries with fewer redactions. He

argued the unredacted billing entries were new and different facts warranting reconsideration of the court's order. He sought to have the attorney fees award revised to award additional attorney fees of $32,521.50, for a total award of $57,633.50. Leslie opposed the motion on several grounds, including that there were no new or different facts to merit reconsideration and Larry should not have been deemed the prevailing party. Larry filed a reply. He argued that Leslie's opposition was an untimely motion for reconsideration.

A hearing was held on Larry's motion for reconsideration on June 16, 2017. On July 11, 2017, the probate court issued a written order denying the motion for reconsideration. Leslie's opposition to the motion for attorney fees had raised the reasonableness of the fees and the distinction between fees related to the motion or trust administration, so the court's ruling on the basis of Larry's redactions was not a new issue. It was Larry's choice to assert attorney-client privilege in association with the attorney fees motion, which the probate court had honored. While Larry may have been justified in claiming the privilege and redacting portions of the statements in his original submission, it did not serve as a basis for reconsideration. Larry failed to satisfy the requirement of due diligence. He was seeking to introduce evidence that he knowingly chose not to present in connection with the motion for attorney fees, because he is not satisfied with the order that resulted from his choice. Failure to present

evidence that was within a party's personal knowledge, where there are no other factors impeding presentation, is not sufficient for reconsideration. Dissatisfaction with the outcome of the choice to assert the privilege is not sufficient justification for seeking to introduce information that was purposefully omitted.

Leslie and Larry each filed a notice of appeal.

DISCUSSION

Prevailing Party Determination

Leslie contends the probate court abused its discretion by finding Larry was the prevailing party on the motion to enforce the settlement for purposes of an award of costs and attorney fees. We disagree.

Civil Code section 1717 provides in relevant part: "(a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs. [¶] . . . [¶] Reasonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit. [¶] . . . [¶] (b) [¶] (1) The court, upon notice and motion by a party, shall determine who is the party

prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section." (Civ. Code, § 1717.)

"Code of Civil Procedure section 1032, which provides for recovery of costs by the prevailing party, defines 'prevailing party' as the party with a net monetary recovery, and a defendant who obtains a dismissal or avoids all liability. If a party is given other than monetary relief, and in all situations not specified, the court has discretion to determine who is the prevailing party. Code of Civil Procedure section 1033.5 specifies attorney fees authorized by contract are an item of costs under section 1032." (*Foothill Props. v. Lyon/Copley Corona Assocs.* (1996) 46 Cal.App.4th 1542, 1552–1553, fns. omitted.)

"A trial court generally has broad discretion to determine the amount of reasonable attorney fees under section 1717, and the award of such fees is governed by equitable principles. (*Hill v. Affirmed Housing Group* (2014) 226 Cal.App.4th 1192, 1195–1196.) Trial courts also generally have 'discretion in determining which party has prevailed on the contract, or that no party has.' (*DisputeSuite.com, LLC v. Scoreinc.com* (2017) 2 Cal.5th 968, 973.) However, 'a party who obtains an unqualified victory on a contract dispute . . . is entitled *as a matter of law* to be

considered the prevailing party for purposes of section 1717.' (*Ibid*., italics added.) [¶] A trial court's determination that a litigant is a prevailing party under section 1717 is generally reviewed for abuse of discretion, but if the challenge to that determination is solely one of law, the de novo standard of review applies. (*Khan v. Shim* (2016) 7 Cal.App.5th 49, 55.)" (*Burkhalter Kessler Clement & George LLP v. Hamilton* (2018) 19 Cal.App.5th 38, 43–44.)

In this case, the probate court denied Leslie's premature motion to enforce the settlement and her request to appoint a costly receiver to administer the estate. After a thorough review of the pleadings, transcripts and rulings associated with the motion to enforce the settlement agreement, the court determined Larry was the prevailing party. Larry coordinated the appraisal of multiple real properties, gathered information on other assets, and arranged the preparation of the estate tax return in record time, especially for an estate of this size. Leslie received distributions from the estate before the estate tax return was finalized and a closure letter received from the IRS. No abuse of discretion has been shown.

Motion for Reconsideration

Larry contends that the probate court abused its discretion by denying the motion for reconsideration. We find no abuse of discretion.

Code of Civil Procedure section 1008, subdivision (a) provides that any party affected by a prior court order may, "based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order." (Code Civ. Proc., § 1008, subd. (a).) The party moving for reconsideration must provide a reasonable explanation for failing to previously produce the evidence. (*In re H.S.* (2010) 188 Cal.App.4th 103, 108.) On appeal, we review an order denying reconsideration for an abuse of discretion. (*Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255.)

In this case, it was Larry's burden in the lower court to present sufficient evidence to support his motion for attorney fees. He chose to withhold certain evidence in connection with the billing entries on the basis of attorney-client privilege. The evidence that he submitted was not sufficient to establish the full amount of the fees. His decision to waive the privilege following the ruling does not constitute new or different evidence. The probate court did not abuse its discretion by denying the motion for reconsideration of the attorney fees order.

DISPOSITION

The order awarding attorney fees is affirmed. The order denying the motion for reconsideration is affirmed. The parties are to bear their own costs on appeal.

MOOR, J.

We concur:

BAKER, Acting P.J.

SEIGLE, J.*

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.